

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**JOINT MOTION FOR APPROVAL OF
SETTLEMENT WITH SWEENEY ENTITIES**

Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the “Liquidator”) of Noble Trust Company and Aegean Scotia Holdings, LLC (“Noble Trust” and “Aegean Scotia,” respectively), by his attorneys, the Office of the Attorney General and Sheehan Phinney Bass + Green, Professional Association, moves, along with The Sweeney Charitable Trust, the Gene Sweeney Trust dated June 18, 2010, the Estates of Gene and Marge Sweeney, Leonard Blanton, individually and as Trustee for The Sweeney Charitable Trust and the Gene Sweeney Trust, and the beneficiaries of said trusts and estates (the “Settling Parties”), for the entry of an order approving a Settlement and Release Agreement by and between the Liquidator¹ and the Settling Parties dated May 6, 2011 (the “Settlement Agreement”).² This Motion is supported by the Affidavit of Robert A. Fleury dated February 21, 2014 (the “Fleury Affidavit”) and the Confidential Affidavit of Robert Fleury dated February 21, 2014. In support of this Motion, the parties state as follows:

¹ At the time of the execution of the Settlement Agreement, Robert A. Fleury was the Liquidator of Noble Trust. On February 1, 2013, Glenn A. Perlow was appointed by order of this Court the successor Liquidator of Noble Trust. As successor Liquidator, Mr. Perlow endorses the Settlement Agreement and hereby moves for its approval.

² In accordance with the Court’s Order Establishing Settlement Agreement Review Procedures dated December 5, 2012, a redacted copy of the Settlement Agreement is attached hereto as Exhibit A and the unredacted Settlement Agreement has been submitted to the Court with the Confidential Affidavit of Robert A. Fleury dated February 21, 2014. Parties wishing to review the unredacted Settlement Agreement may do so by contacting the Office of the Liquidator and following the Court approved procedures, including the execution of a confidentiality agreement.

1. In 2003, Noble Trust was organized and chartered under the laws of the State of New Hampshire as a non-depository banking corporation, and subject to regulation by the New Hampshire Banking Department (the “Banking Department”).

2. As a result of irregularities discovered by the Banking Department’s 2008 examination of Noble Trust, on February 11, 2008, Commissioner Peter Hildreth commenced a liquidation proceeding by filing a Verified Petition for Liquidation (the “Liquidation Petition”) in this Court, seeking the appointment of a liquidator for Noble Trust pursuant to RSA 395:1, as well as related injunctive relief against Noble Trust pending the Court’s ruling on the Liquidation Petition (the “Liquidation Proceeding”).

3. On March 27, 2008, this Court entered an order (the “Liquidation Order”) appointing Commissioner Hildreth as liquidator of both Noble Trust and its parent company, Aegean Scotia Holdings, LLC (“Aegean Scotia”). The Liquidator is the duly appointed successor liquidator of Noble Trust and Aegean Scotia by order of this Court dated February 1, 2013.

4. Colin P. Lindsey (“Lindsey”) was the president of Noble Trust and chairman of its board of directors. Fleury Affidavit, ¶ 3. During the course of its business, Noble Trust solicited and received funds from both new and existing clients. *Id.* Noble Trust’s clients’ funds were maintained as individual management accounts or individual retirement accounts established for the benefit of those clients, or held in charitable trusts for which Noble Trust clients were both the grantors and beneficiaries during their lives. *Id.*

5. Between June 2004 and September 2007, Noble Trust (acting as a trustee under its clients’ trusts) invested approximately \$15 million in an entity known as Sierra Factoring, LLC (“Sierra”). Fleury Affidavit, ¶ 4. As early as 2005, Sierra had some difficulty meeting its

requisite interest payments or redeeming principal, causing it sometimes to use new Noble Trust client money to pay its interest obligations or to redeem principal of other Noble Trust clients.

Id. Based upon information available to the Liquidator, the \$15 million investment in Sierra became substantially or entirely worthless, a fact that Lindsey did not disclose to Noble Trust's clients. Id.

6. Instead, Lindsey attempted to conceal the loss from Noble Trust's clients and other parties in interest (including the Banking Department) through a fraudulent and illegal Ponzi scheme. Fleury Affidavit, ¶ 5. In 2006, Sierra stopped paying entirely any monthly "interest" payments to Noble Trust, which had until that time, been paid to Noble Trust clients invested in Sierra. Id. To make the monthly payments its clients were accustomed to, Noble Trust began using, among other sources, money from newer investors to make such payments. Noble Trust also used funds from newer investors to repay older investors' principal investment in Sierra. Id.

7. The Liquidator is in the process of marshaling the assets of Noble Trust in order to maximize the value of the liquidation of Noble Trust for the benefit of creditors. Among his other powers, the Liquidator is authorized to assert any claims that may be brought by or on behalf of Noble Trust or Aegean Scotia.

8. The Liquidator commenced litigation in this Court against various former Noble Trust investors, including Cecil and Marge Sweeney and other defendants in Hildreth v. Sweeney et al., Docket No. 10-E-0034 (the "Action"). Fleury Affidavit, ¶ 7. Pursuant to the Action, the Liquidator alleges certain fraudulent transfer, unjust enrichment, constructive trust and conversion claims against the Defendants who were repaid their investment in Sierra, often at the expense of other newer Noble Trust investors. Id.

9. The Liquidator has reached a settlement with defendants Marge and Cecil Sweeney. The Sweeney Charitable Trust received \$138,079.51 in payments from Noble Trust between October 30, 2006 and January 10, 2007. Fleury Affidavit, ¶ 8. The Sweeneys have both passed away, so the settlement was reached with their estates as well as the other Settling Parties. Under the Settlement Agreement, the Settling Parties have paid a confidential sum to the Liquidator (the “Settlement Funds”), which the Liquidator has agreed to hold in an escrow account pending approval of the Settlement Agreement by this Court in an order that becomes both final and no longer subject to appeal. Upon final Court approval, the Settlement Funds will become part of the liquidation estate to be distributed or used by the Liquidator as appropriate.

10. Pursuant to the Settlement Agreement, the Liquidator and the Settling Parties shall mutually release each other from any and all claims that arise out of or relate in any way to the Action, the claims in the petition or related transactions. Without limiting the generality of the release, the Settling Parties specifically waive any and all claims or proofs of claims (and the right to file or amend any claims or proofs of claims) in the Liquidation Proceeding.

11. The Liquidator and the Settling Parties believe the Settlement Agreement is fair, reasonable and adequate, and is the result of contested litigation and arms-length negotiations between the parties and their counsel. In order to avoid the additional time, expense and resources that continued litigation of the Action against the Sweeneys would undoubtedly consume, and the attendant uncertainty of outcome associated with such litigation, the Liquidator and Settling Parties negotiated the Settlement Agreement, which by its terms does not become effective unless and until it is approved by this Court.

12. The Settlement Agreement maximizes the value of the liquidation of Noble Trust by relieving further costs and potential risk of continued litigation with the Sweeneys, and

provides for, among other things, (i) payment of the Settlement Funds, eliminating any collection risk if the Liquidator were compelled to obtain judgments against the Settling Parties, and (ii) release of any and all of the claims in the Liquidation Proceeding that any of the Settling Parties filed or could have filed.

13. The Liquidator therefore believes that the Settlement Agreement is fair and reasonable and that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and that the settlement resolves the pending disputes with the Sweeneys in the Action on terms that are advantageous to the liquidation of Noble Trust and Noble Trust creditors.

14. Accordingly, the Liquidator and Settling Parties believe that approval of the Settlement Agreement is in the best interests of Noble Trust, its creditors, and all parties in interest. See In re Liquidation of The Home Ins. Co., 154 N.H. 472, 489-90 (2006).

WHEREFORE, the Liquidator and the Settling Parties request that the Court grant this Motion and approve the Settlement Agreement, and grant the Liquidator and the Settling Parties such other and further relief as is just.

Respectfully submitted,

Dated: February 27, 2014

GLENN A. PERLOW,
BANK COMMISSIONER OF THE
STATE OF NEW HAMPSHIRE,
AS LIQUIDATOR OF NOBLE TRUST
COMPANY

By his attorneys,

ANN M. RICE, DEPUTY ATTORNEY
GENERAL

Peter C.L. Roth w/runner cme

Peter C.L. Roth (NH Bar 14395)
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-and-

SHEEHAN PHINNEY BASS + GREEN
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Christopher M. Candon

Christopher M. Candon (NH Bar 21243)
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THE SWEENEY CHARITABLE TRUST,
THE GENE SWEENEY TRUST, THE
ESTATES OF GENE AND MARGE
SWEENEY, LEONARD BLANTON,
INDIVIDUALLY AND AS TRUSTEE FOR
THE SWEENEY CHARITABLE TRUST
AND THE GENE SWEENEY TRUST,
AND THE BENEFICIARIES OF THE
TRUSTS AND ESTATES

By their attorneys,

MCLANE, GRAF, RAULERSON
& MIDDLETON P.A.

Bruce W. Felmly w/runner cme

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EXHIBIT A

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("AGREEMENT") is made and entered into this 6th day of May, 2011 by and between Robert A. Fleury, the Acting Bank Commissioner for the State of New Hampshire, as Liquidator for Aegean Scotia Holdings, LLC, Noble Trust Company ("the Liquidator" or "Plaintiff") and The Sweeney Charitable Trust, the Gene Sweeney Trust dated June 18, 2010, the Estates of Gene and Marge Sweeney, Leonard Blanton, individually and as Trustee for The Sweeney Charitable Trust and the Gene Sweeney Trust, and the beneficiaries of said trusts and estates (collectively the "Defendants")

WHEREAS, by virtue of Orders entered by the Merrimack County (New Hampshire) Superior Court in the proceeding entitled "In the Matter of the Liquidation of Noble Trust Company" (Case No. 08-E-0045) (the "Liquidation Proceeding"), the Liquidator (and his predecessor) were duly appointed, and were granted all of the powers as more fully set forth therein, including the rights to pursue and resolve claims against all individuals and entities who invested in or participated in transactions with Noble Trust Company and Aegean Scotia;

WHEREAS, certain of the Defendants are alleged to have invested in and/or engaged in transactions with Noble Trust Company, as alleged in part in the Petition filed in the Superior Court of New Hampshire entitled "Hildreth v. Sweeney" (Case No. 10-E-0034) (the "Litigation");

WHEREAS, Plaintiff and Defendants have vigorously contested and explored many of the factual and legal issues in the Litigation;

WHEREAS, Defendants do not believe Plaintiff's claims are meritorious and have denied and continue to deny that they are legally responsible or liable to Plaintiffs for any of the matters asserted in this Litigation but have concluded that settlement is desirable in order to avoid the time, expense and inherent uncertainties of defending the Litigation and to resolve, finally and completely all pending and potential claims of the Plaintiffs and any related or successor entities relating to any claims which were or could have been asserted by Plaintiffs.

WHEREAS, the Plaintiff and the Defendants ("the Parties") agree and acknowledge that the settlement and release described in this Agreement is made without duress and upon the advice of each Party's respective counsel;

WHEREAS, the Parties further agree and acknowledge that each has contributed to or had the opportunity to contribute to the final form of this Agreement and it shall be considered as having been jointly drafted;

WHEREAS, this Settlement Agreement must be approved by the Merrimack County Superior Court, and, in accordance with Section 15 hereof, this Settlement Agreement will be considered void and of no further force and effect if the Court denies such approval;

NOW, THEREFORE, for and in consideration of the promises, the mutual covenants, payments, releases, rights and obligations set forth herein, the sufficiency and receipt of which are hereby acknowledged by each Party, the Parties agree as follows:

1. **Payment by Defendants.** Defendants shall pay the sum of [REDACTED] to the Plaintiffs upon execution of this Agreement as payment and satisfaction in full of all claims against Defendants.

2. **Release of Defendants.** Upon the effective date of this Agreement, the Plaintiff, on behalf of himself, the Liquidation Estate, Noble Trust Company, Aegean Scotia, and any of Noble's or Aegean Scotia's, former officers, directors, representatives, managers, shareholders, consultants, investors, insurers, agents, members, partners, subsidiaries, affiliates, related parties, attorneys, accountants, employees, predecessors-in-interest, successors, and assigns (each of which is a "Releasing Party"), irrevocably and unconditionally releases, acquits and discharges the Defendants, and their respective present and former entities, trusts, trustees, predecessors-in-interest, successors, and assigns (each of which is a "Released Party"), of and from all claims, demands, causes of action, obligations, liabilities, loss, debts, costs, expenses, and damages of any kind, nature or description, either at law or equity, whether now known or unknown, suspected or unsuspected, existing, claimed to exist, or that may hereafter exist, which arise out of or relate in any way to the Litigation, the claims in the Petition or related transactions.

3. **Release of Plaintiff.** Upon the effective date of this Agreement, the Defendants, and their respective present and former entities, trusts, trustees, predecessors-in-interest, successors, and assigns (each of which is a "Releasing Party"), irrevocably and unconditionally releases, acquits and discharges Plaintiff, the Liquidation Estate, Noble Trust Company, Aegean Scotia, and any of the Liquidator's, Noble's or Aegean Scotia's former officers, directors, representatives, managers, shareholders, consultants, investors, insurers, agents, members, partners, subsidiaries, affiliates, related parties, attorneys, accountants, employees, predecessors-in-interest, successors, and assigns (each of which is a "Released Party"), of and from all claims, counterclaims, demands, causes of action, obligations, liabilities, loss, debts, costs, expenses, and damages of any kind, nature or description, either at law or equity, whether now known or unknown, suspected or unsuspected, existing, claimed to exist, or that may hereafter exist, which arise out of or relate in any way to the Litigation, the claims in the Petition, or related transactions.

Without in any way limiting the generality of the foregoing, Defendants specifically waive any and all claims or proofs of claims (and the right to file or amend such claims or proofs of claims) in the Liquidation Proceeding.

4. **Binding Effect.** The Parties agree and acknowledge that this Agreement shall bind the Parties to this Agreement and also their respective heirs, administrators, executors, assigns, shareholders, officers, directors, attorneys, servants, subsidiaries, divisions, affiliates, employees, agents, representatives, insurance carriers, and predecessors and successors in interest, and related entities, and shall inure to the benefit of the Parties released and their respective heirs, administrators, executors, trustees, assigns, shareholders, officers, directors, members, attorneys, servants, subsidiaries, divisions, affiliates, employees, agents,

representatives, insurance carriers, and predecessors and successors in interest. This Agreement is not intended to, and shall not, create any rights in favor of any third party unless and only to the extent expressly stated herein.

5. Cooperation. The Parties agree to fully cooperate with each other to give full force and effect to the terms and intent of this Agreement, including, but not limited to completing, executing, and delivering any and all documentation reasonably required to effectuate any and all aspects of the settlement that is the subject of this Agreement. This cooperation extends to filing pleadings and participating in hearings at the Merrimack County Superior Court as necessary to secure approval of this Settlement Agreement.

6. Knowledge of Content and Advice of Counsel. Each of the Parties hereto acknowledges that such Party has fully read and comprehended the contents of this Agreement, and that such Party is in full agreement with each and every one of the terms, conditions, and provisions set forth herein. Each of the Parties further acknowledges that such Party has retained or has been advised to retain, his, her or its own separate and independent counsel in connection with the negotiation, drafting, and execution of the Agreement, and has been fully advised and informed of the consequences of executing the Agreement.

7. Execution. This Agreement may be executed in duplicate counterparts and delivered by facsimile or electronic delivery (e.g., PDF). Any executed counterparts, taken together, shall constitute the entire Agreement between the Parties. A facsimile or electronically delivered signature shall be deemed to have the force and effect of an original signature. In the event that a Party requests an original signature, the Party to whom the request is made shall promptly deliver an original signature to the requesting Party.

8. Integration. This Agreement constitutes the entire Agreement and understanding of and between the Parties with respect to the subject matter hereof, and to the extent it is inconsistent with or contradicts any prior practices, negotiations, agreements and understandings, whether written or oral, express or implied, between it and with respect thereto, this Agreement shall supersede and replace such prior practices, negotiations, agreements and understandings.

9. Tolling. Upon the approval of this Agreement by the Merrimack County Superior Court the Tolling Agreement previously entered into by the Parties will be dissolved.

10. Reliance. The Parties acknowledge and warrant that, except as expressly stated in this Agreement, no promises or inducements have been made or offered by the Parties for this Agreement, and that this Agreement is executed by the Parties without reliance upon any other promises, inducements, statements or representations made by the Parties concerning the nature or merits of any claims that they might have had against each other. The Parties enter into this Agreement based solely upon their own respective investigation and evaluation, and assume the risk that the facts or law may be otherwise than the Parties believe.

11. Modification and Waiver. No modification or waiver of any provision of this Agreement nor consent to any departure therefrom, shall in any event be effective, unless the

same shall be in writing and signed by the Party to be charged therewith and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

12. Authority to Settle and Release Claims. Each of the Parties represents and warrants that it is duly authorized, and has the right, to execute this Agreement, that its' State Agency Head, Board of Directors or other governing body has approved this Agreement and otherwise received all necessary consents, and that the person signing below is authorized to enter into this Agreement on its behalf. Mr. Blanton warrants that he has authority to bind all of the Defendants to the provisions of this Agreement.

13. Confidentiality. Each of the Parties agrees the settlement, the terms of the settlement and all negotiations shall remain confidential and shall not be disclosed except as required by law, an order of the court, or state or federal tax, probate or other legal reporting or accounting requirement. The parties agree that the confidentiality obligations in this Section shall extend to the pleadings and hearings necessary to secure approval of this Agreement by the Merrimack County Superior Court. Therefore, all such pleadings will be filed either under seal or in conformity with such confidentiality procedures as may be then in effect in the Liquidation Proceeding, and to the extent allowed by the Court, all such hearings shall be held *in camera*.

14. Cost and Fees. Each Party shall bear its own attorneys' fees and costs incurred in connection with the underlying disputes and the negotiation, execution and effectuation of this Agreement. In the event that action must be taken to enforce any provision of this Agreement, the prevailing party in such action shall be awarded its reasonable attorney fees and costs incurred due to the breach and enforcement of this Agreement.

15. Court Approval. The Parties acknowledge and agree that this Agreement will become void unless it is approved by the Court overseeing the Liquidation Proceeding. Therefore, the Parties will jointly file a Motion to Approve this Settlement, either under seal or in accordance with such confidentiality procedures as may be then in effect in the Liquidation Proceeding, and will cooperate in preparing all supporting pleadings and presenting argument, if necessary. Should the Court deny the Motion to Approve, this Agreement shall be void and have no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed their names on the day and year written below.

**Robert Fleury, Acting Bank Commissioner of the State
of New Hampshire, as Liquidator of Noble Trust
Company and Aegean Scotia, LLC**

By Abigail G. Shaine
Agent of the Liquidator
Printed Name: Abigail A. Shaine

Date: 5/6/11

Leonard Blanton, on behalf of the Defendants

By: Leonard Blanton TEE

Printed Name: LEONARD BLANTON

Date: 5-2-11

EXHIBIT B

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**ORDER GRANTING JOINT MOTION FOR
APPROVAL OF SETTLEMENT WITH SWEENEY ENTITIES**

Upon consideration of the Joint Motion for Approval of Settlement Agreement with Sweeney Entities dated February 27, 2014 (the "Motion"), pursuant to which the Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively),¹ and The Sweeney Charitable Trust, the Gene Sweeney Trust dated June 18, 2010, the Estates of Gene and Marge Sweeney, Leonard Blanton, individually and as Trustee for The Sweeney Charitable Trust and the Gene Sweeney Trust, and the beneficiaries of said trusts and estates (the "Settling Parties"), seek approval of their Settlement and Release Agreement (the "Settlement Agreement"); due written notice of the Motion having been given and served upon all creditors and other interested persons entitled thereto; the Court having reviewed the Motion and having reviewed the Affidavit supporting the Motion and the Settlement Agreement filed under seal in accordance with this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012; there being no objections made to the relief requested; and having found that approval of the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment,

¹ At the time of the execution of the Settlement Agreement, Robert A. Fleury was the Liquidator of Noble Trust. On February 1, 2013, Glenn A. Perlow was appointed by order of this Court the successor Liquidator of Noble Trust. As successor Liquidator, Mr. Perlow endorses the Settlement Agreement and by the Motion moves for its approval.

is fair and reasonable and is in the best interests of this estate and its creditors; and, after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted, and the Settlement Agreement is approved. The Liquidator, the Settling Parties and all other parties are authorized to take all steps and execute all documents necessary or permitted to consummate or otherwise enter into the Settlement Agreement.

2. Court approval shall be deemed to occur on the date that this order shall have become non-appealable or, in the event of an appeal, has been affirmed after all appeals therefrom have been exhausted.

So Ordered.

Dated: _____

Hon. Larry M. Smukler

CERTIFICATE OF SERVICE

I, Christopher M. Candon, hereby certify that on February 27, 2014, a copy of the foregoing was served by first class mail, postage prepaid on the parties listed below.¹

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¹ Simultaneously herewith, the Liquidator has filed a Certificate of Service that evidences a broader service of the pleading on claimants and other parties in interest.


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